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IN THE

Supreme Court of the United States

No. 256

WALTER A. LEIMER, PETITIONER,

VS.

FRED B. HULSE, JOHN GROVER ET AL.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI AND BRIEF IN SUPPORT OF PETITION.

WALTER A. LEIMER,
Petitioner and Attorney.

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To the Honorable Harlan Stone, Chief Justice of the United States, and Associate Justices of the United States:

STATEMENT OF THE CASE.

This is a case originally brought in the Circuit Court of Jackson County, Missouri, in Kansas City, by respondents of the Missouri Bar Advisory Committee in which petitioner was made the defendant in a disbarment procedure.

The venue was fixed in a jurisdiction hostile to petitioner.

At the time of the alleged trial the political offices of Jackson County as well as many other parts of Missouri were under the domination and control of the nationally notorious Pendergast political machine which petitioner had consistently and openly opposed over a period of years and that he had incurred the political enmity of many members of the Circuit Court of Jackson County. That under the facts and circumstances petitioner could not have a fair and impartial trial in a County wherein the Judges of the trial Court owed their office or political allegiance to the aforesaid political machine.

That petitioner duly made request of the Honorable Supreme Court of Missouri to fix the venue of the said suit in a Circuit wherein no animosity, ill will, personal or political prejudice existed against him, in order that he might have a fair and impartial trial and hearing which request was denied and refused by the Missouri Court. *Leimer* v. *Cook et al.*, No. 37880 Supreme Court of Missouri attached (Rec. p. 114).

Petitioner states that he was and is at all times hereinmentioned a citizen of the United States and of the State of Missouri (Rec. pp. 190-238).

He was duly licensed to practice law before the Courts of Missouri in the year 1922 and was later admitted to practice before the United States Courts and was so engaged until the time of the said proceedings and that a Federal right is involved (Rec. pp. 237-241).

That the decree of the Missouri Supreme Court will be *res judicata* and a bar to such a right.

Petitioner states that prior to the alleged trial his pleadings were stricken from the files by the trial court and that he was denied the right to make a complete defense (Rec. pp. 54, 55, 67, 80, 81, 254).

That the cause was *coram non judice* thereafter. The petition was in eight counts most of which were composed of capricious and inconsequential matters and alleged among other unsupported charges that the attitude of petitioner toward the courts was contemptuous (Rec. pp. 217-225).

Complainants with one exception were practicing lawyers acting as agents of the Supreme Court of Missouri which was to eventually hear and try the case *de novo* on appeal taken by means of a writ of error (Rec. pp. 217-226).

That in the prosecution and the adjudication of the rights of petitioner, which included the right to follow a lawful occupation and the right to make a living for himself and family, petitioner was charged with having contemned the various Courts both State and Federal but in forums other than the one in which the action was brought against him (Rec. pp. 217-8-9). Nothing in the record or any other record shows that petitioner was ever charged with or convicted of contempt by any such Court or Courts, nor is it so alleged in the complaint.

Petitioner has attempted by resort to the Courts of the land to prevent powerful interests from exercising subversive control over his clients and the public generally through politically prominent members of the Bar who in retaliation caused indignities to be heaped upon himself and family and in addition to charges filed petitioner has been wrongfully openly accused of indulging in antisemitism, and pugilism, of criminal contempt and moral turpitude and of having psychosis (Rec. pp. 217 to 226).

Petitioner has been a law abiding citizen of the community for more than half a century, and there are no records or evidence to the contrary. The witnesses with one exception were all lawyers or judges of the various

divisions of the trial and Probate Court and were members of the organization interested in the prosecution of petitioner and the suppression of his lawful activities wherein he had exposed oppression committed by certain lawyers and others in high office, in an attempt to prevent the unlawful practice of committing sane persons to the various insane asylums of Missouri (Rec. p. 241).

Petitioner was not charged with having violated any of the laws of the State of Missouri or the United States or of having ever betrayed or defrauded any client in all the years he has practiced before the Courts of Missouri and the United States (Rec. pp. 217 to 226).

The trial Court found against petitioner on all the Counts of the complaint except one, Count V, on charges which were mostly capricious and inconsequential as shown by the complaint (Rec. pp. 217-226).

Among other specific charges against petitioner was that of having sued several prominent lawyers and a life insurance company before a Court of competent jurisdiction, and of having charged them in the said action with wrongful bribing or inducing one of his clients to clandestinely and fraudulently settle a lawsuit. Although there was cogent and convincing evidence as well as admissions by the participants that illegal payments and other gratuities had been made the jury found against petitioner's client (Rec. p. 221).

The Missouri State Bar Committee was informed of the facts in this and other proceedings in which petitioner's clients had suffered fraud and oppression at the hands of a few lawyers but had refused to protect the public interests and petitioner sought relief before the Courts in the protection of their rights (Rec. pp. 241, 315).

Petitioner contends that the rights of liberty and property of his clients are paramount to the preservation

of the alleged integrity of a certain few lawyers who are members of the Bar of Missouri, and that the retaliation upon petitioner by the *quasi* judicial inquisitional commission constitutes an implied threat which in effect suppresses the truth, denies free speech and free access to the Courts of the land (Rec. pp. 251, 205).

The charges made by petitioner were properly made in pertinent pleadings, before Courts of competent Jurisdiction and were privileged even though they involved members of the Bar of Missouri (Rec. pp. 241-251).

The rights, liberty and property of petitioner's clients became submerged in the controversy among lawyers and the attempt to retaliate upon petitioner after most of his witnesses have died or left the State of Missouri.

Petitioner contends that the attempt to try alleged contemns committed in forums other than the trial court and malicious prosecution actions under the guise of a disbarment procedure, is an illegal, unreasonable and arbitrary abuse of judicial power.

Paid solicitors were employed by the State Bar Committee in an attempt to procure claims against petitioner (Rec. p. 251). Judges of the various divisions of the trial Court were seen in advance and efforts were made to and did prejudice them against petitioner. Members of the State Bar Committee sought to intimidate petitioner and compel him to seek the withdrawal of his license to practice law without a trial by threatening to ruin his business with adverse publicity (Rec. pp. 48-251).

Petitioner was openly advised by agents of the Court that no matter what evidence he presented it would be of no avail, and that all the judges of the Circuit Court would appear against him as witnesses (Rec. p. 54).

In the trial of the said cause Judge Southern of the Circuit Court of Jackson County disqualified himself and transferred the cause to Judge Terte from whom petitioner

took a change of venue because of his being a material witness and an interested party (Rec. p. 134).

The cause was then sent to Judge John R. Cook and petitioner filed a statutory affidavit alleging him to be an interested party and a material witness which under the law was sufficiently compelling to and did disqualify him, never the less he proceeded arbitrarily to try the cause (Rec. pp. 51-52-53-57-228-254).

That the matter was *coram non judice* thereafter. Petitioner was denied the benefit of the usual and customary proceedings and the rules of evidence and various pleadings were arbitrarily stricken from the files by order of the trial judge (Rec. pp. 55-213).

He was denied the right to file a supplemental answer and refused the right of having a proper record of the same (Rec. pp. 54-55-68-189).

The trial judge after trial refused to sign the bill of exceptions and arbitrarily ordered petitioner's bystander's bill of exceptions stricken from the record after he had allowed its filing (Rec. pp. 78-79-80-211) all without proper record or lawful justification.

Petitioner appealed to the Supreme Court by means of a mandamus proceeding which was by it refused (No. 38851—September 25, 1943, annexed).

The bill was later admitted by that Court however (Rec. pp. 95-178). The Supreme Court then proceeded to try the case *de novo* after argument had been made, which alleged trial took place in the chambers of the Court behind closed doors, upon alleged evidence not of record in the cause and compiled by the agents of the Court. The findings of the Supreme Court unsupported by an authentic record are unfair, unjust and misleading conclusions as well as an arbitrary abuse of its power. The Court has inadvertently confused the issues and petitioner's right to take more than one change of venue from Judges

that were interested parties and alleged to be material witnesses with petitioner's right to take a change of venue because of bias and prejudice. The issues which petitioner sought to formulate have been inadvertently ignored (Rec. p. 282). The Missouri Supreme Court rendered its decree which forever disbars petitioner from the practice of law within the State of Missouri (Rec. p. 293).

The opinion of the Supreme Court of Missouri alleging that there was an agreement to retry the cause before the Court in an *ex parte* procedure which would prevent a review before this Court is unsupported by the record and denied by petitioner.

Petitioner states that there was no *bona fide* stipulation to that effect and none in the record and that if it was the intention of the Missouri Supreme Court to so hold an alleged trial *de novo*, it exceeded its authorized powers and that such procedure is violative of statutory and organic law.

Further that petitioner was inadvertently subjected to surprise and entrapment (Rec. p. 316).

In its exercise of police power of the State of Missouri the Supreme Court in an attempt to arbitrarily regiment the Bar of Missouri and the United States, by legislative edict has inaugurated a *quasi* judicial inquisitional commission and has delegated to it arbitrary, autocratic and unauthorized powers, or has subsequently, with knowledge of the facts and by its inadvertent failure to act, ratified and adopted the usurpation of such powers by the said commission or commissions.

That among the powers so usurped are; the arbitrary and unlimited abuse of the subpoena, according to the will or caprice of the inquisitional committee (Rec. p. 248); the power to assess, levy, collect and disburse taxes imposed upon all members of the Bar of Missouri and the United

States without providing reasonable or business like audits, supervision and control over such funds (Rec. pp. 245-6, 252-3); the power to solicit claims and prosecute litigation among lawyers who are competitors of the various committees and which litigation is finally submitted to the Missouri Court for adjudication.

That the said commission is controlled by a clique of practicing lawyers, acting in a dual capacity, subservient to personal and political interests (Rec. p. 247).

That the autocratic powers usurped by the said commission or committee constitute a dangerous system of remote control which menaces the rights of petitioner and all litigants dependent upon the Bar for representation before the Courts both State and Federal as well as those about to appear before such tribunals (Rec. pp. 209-253).

That no adequate, reasonable or businesslike means of supervision has been provided to protect either the Bar of Missouri and the United States or the public whom they represent from such abuses and from the implied threat created by the inauguration of rule by commissions (Rec. p. 252). That among the arbitrary powers usurped by such commissions are combined all three functions of government. The effect of the exercise of unreasonable and unauthorized powers is to impel fear into the minds of petitioner, members of the Bar and the public whom they represent and to coerce judgments, deny free access to, and due process of law before, the Courts of Missouri and the United States. Further to subvert the inherent rights and privileges of petitioner and all litigants appearing or about to appear before such Courts (Rec. pp. 241-253).

Petitioner in an effort to protect the life, liberty and property of his clients as well as his own rights, has consistently attacked in the Courts of Missouri the efforts

to arbitrarily regiment the Bar of Missouri and the United States and the usurpation of office by political appointees of the Court in the exercise of unauthorized powers which enables them and their associates by coercion, intimidation and oppression to dominate the free will of petitioner and other members of the Bar of Missouri and the United States and the litigants whom he and they represent (Rec. 241-251-2-3).

That in every such instance his efforts have been thwarted.

That among the legal proceedings instituted by petitioner to protect his and his clients rights were declaratory judgment actions, mandamus, prohibition, counterclaim, answer and numerous ancillary proceedings (Rec. pp. 36, 189-200) (No. 38851—37880, annexed).

Such proceedings have been consistently stricken from the files, or the Courts have refused to entertain jurisdiction or to make a record upon which petitioner could obtain a proper review before a disinterested Court.

Petitioner further contends that he did not instigate a groundless suit against any lawyers but that he produced claims in the five days consumed in the said trial.

On the other hand the Bar Advisory Committee of Missouri filed numerous (twenty two in number) charges against petitioner which were without merit and known to be such and which they made no effort to support or prosecute in a lawful manner. That the trial Court found for petitioner on this Count V (Rec. p. 3).

Thereafter the Missouri Supreme Court with knowledge of the facts or with such knowledge as would put a reasonably prudent person upon inquiry, as shown by the pleadings and findings has inadvertently discriminated against petitioner and practiced partiality and preference in penalizing petitioner and at the same instance in ratifying and adopting similar acts on the part of its agents,

members of the Missouri Bar Advisory Committee, who are likewise members of the Bar of Missouri (Rec. pp. 224, 257).

That the case was tried *de novo* by Division One of the Supreme Court of Missouri upon a writ of error (Rec. p. 142).

Petitioner filed motions for a rehearing and for a transfer of the Cause to the Court *en banc*, both of which motions were denied (Rec. p. 294 and 311).

It is contended that the Honorable Supreme Court of the United States has jurisdiction to review the decree and judgment in question for the following reasons:

1. That petitioner a citizen of the United States was denied a fair trial and due process of law and the equal protection of the laws in violation of the inhibitions of the Fourteenth Amendment to the Constitution of the United States.

2. That the affidavit duly filed in the trial Court by petitioner alleging that John F. Cook, Judge thereof was an interested party was sufficiently compelling to and did disqualify him in the trial of the Cause and that the entire procedure thereafter was *coram non judice*.

3. That the entire procedure and the decree of the Supreme Court of Missouri is against the supreme law of the land and contrary to and violative of Article VI of the Constitution of the United States.

4. That the act of being admitted to the Bar did not deprive petitioner of his Constitutional rights.

5. That Federal questions are involved which include the right to practice law before the Courts of the United States and the right of a hearing and review before such Courts.

6. That the Missouri Supreme Court exceeded its jurisdiction and that the decree and judgment thereof are unsupported by the judgment Rolls, the evidence of record, the record proper and that said decree is a nullity.

7. That the means used wherein the Supreme Court acted as prosecutor and judge and jury in the cause concurrently, constituted the denial of a fair trial, and the equal protection of the laws, and is violative of the inhibitions of the Fourteenth Amendment to the Constitution of the United States.

8. That the decree is oppressive and unreasonable, and subjects all litigants who must necessarily appear before the Courts through the representation of counsel to the whims and caprice of a commission.

9. That the right to labor and follow a calling of one's choice is an inherent right subject to the inhibitions of the Fourteenth Amendment to the Constitution of the United States.

10. That the attempt to arbitrarily regiment the Bar of Missouri and the United States through the creation of a commission by judicial edict and the delegation of unreasonable and unauthorized powers to political appointees of the Court, together with the failure to protect the Public and the Bar from the usurpation of such authority, constitutes an oppression which subverts the purposes for which the Courts were organized and that the Missouri Supreme Court has inadvertently exceeded its jurisdiction in attempting to delegate unauthorized powers never intended, or give it under the Constitution of the United States and in violation of Article III and the Fourteenth Amendment thereof.

The questions presented are as follows:

1. The Supreme Court has no jurisdiction to retry a cause in which the trial Court had no original jurisdiction.

2. That the means used to try alleged contemns claimed committed in forums other than the trial Court is violative of organic and Constitutional law and is arbitrary and oppressive.

3. That the means used wherein the Missouri Supreme Court acted as prosecutor, judge and jury concurrently, constitutes the denial of a fair and impartial hearing and of due process of law and violates the inhibitions of the Fourteenth Amendment for the Constitution of the United States.

4. That the Missouri Supreme Court in rendering an opinion based upon conclusions unsupported by the record, violates the rights of petitioner, a citizen of the State of Missouri and of the United States, in unlawfully preventing him from practicing law before the United States Courts, and is contrary to Article VI in the Fourteenth Amendment to the Constitution of the United States.

5. That the Missouri Supreme Court has no jurisdiction to try a case *de novo* upon alleged facts compiled by its own agents, not of the record proper, held in its chambers, behind closed doors, in an *ex parte* manner.

6. That the entire procedure and the decree of the Supreme Court of Missouri, unsupported by the record proper and the judgment rolls is a nullity.

7. That the trial court and the Supreme Court of Missouri exceeded their respective jurisdictions in the attempt to exercise police power of the State of Missouri, for the benefit of a few lawyers wherein no public interest was involved, and in a manner contrary to organic and statutory law.

8. Petitioner was not afforded a fair trial and hearing and due process of law.

9. That the changing of, or the abrogation of the existing fundamental rules of procedure and evidence in the trial of the case by the Supreme Court of Missouri, or the inadvertent evasion of such rules, denies petitioner the equal protection of the laws and is contrary to the inhibitions of the Fourteenth Amendment.

10. That the entire cause is *coram non judice.*

11. That the matter is momentous and in effect is an implied threat affecting the vested rights of petitioner, all members of the bar, and the litigants whom they represent.

12. That the attempt to try malicious prosecution actions within a disbarment procedure abrogating the existing fundamental procedure of such actions, constitutes an arbitrary and unreasonable discrimination which has denied petitioner the right to make a proper defense and was and is contrary to, and violative of, the Fourteenth Amendment to the Constitution of the United States.

13. That the creation of a *quasi* judicial inquisitional commission by the Supreme Court of Missouri in an attempt to arbitrarily regiment the Bar of Missouri and the United States by legislative edict, wherein arbitrary and unauthorized powers have been delegated to commissions controlled by practicing lawyers composed of political appointees of the Court, and the inadvertent ratification of the usurpation of such unauthorized powers by the said commissions, which includes the power to rise above their creative source and to supersede the Courts of Missouri and the United States and to dictate whom may appear before such Courts, constitutes a denial of free access to the Courts of the land both State and Federal and

inaugurates government by bureaucracy, all of which is in conflict with the supreme law of the land, as well as being an encroachment on the legislative and executive branches of the government by the judiciary.

14. That the means used in the procuration of the judgment decree and findings, were unfair and denied petitioner due process of law and the equal protection of the laws in the defense of his rights and violated the inhibitions of the Fourteenth Amendment to the Constitution of the United States.

15. That the prevention of a proper review before the Courts of the United States by a suppressed record in an *ex parte* procedure is in excess of the jurisdiction conferred upon the Supreme Court of Missouri and is confiscatory as to the rights, good will, liberty and property of petitioner.

16. That the Supreme Court of Missouri has inadvertently practiced partiality and prejudice in penalizing petitioner for the filing of an alleged groundless suit and at the same instance in ratifying and adopting similar acts on the part of its agents the Bar Advisory Committee of Missouri.

17. That the decree and findings inadvertently fail to clarify the issues and to properly discriminate between the right of a change of venue taken because of the interest of the trial judge with the right of a change of venue taken because of bias and prejudice of the trial judge and the decisions affecting each, all to the prejudice of petitioner.

18. That the decree and findings of the Missouri Supreme Court are arbitrary, unjust, unreasonable and oppressive and that the petition fails to state a cause of action in disbarment.

19. That the franchises, good will, property and liberty of petitioner have been confiscated without any violation of the laws of the State of Missouri or the United States.

20. The decree of the Missouri Supreme Court impels fear, apprehension and confusion into the minds of the Bar of Missouri and the United States and subjects the lawyer in every unsuccessful lawsuit to attack by a commission composed of his competitors and provided with unlimited funds for which no adequate, proper or reasonable supervision, control and accounting have been provided.

21. That the rights of petitioners clients and the public have been ignored, overridden and submerged in a controversy involving lawyers.

Wherefore your petitioner prays that a Writ of Certiorari issue under the seal of that Court directed to the Supreme Court of Missouri commanding said Court to certify and send to this Court a full and complete transcript of the record and the proceedings of the said Supreme Court of Missouri had in the case numbered and entitled on its docket No. 38363, In the Matter of Disbarment of Walter A. Leimer. Walter A. Leimer, Plaintiff in error, v. Fred B. Hulse, John Grover *et al.*, Defendants in error, to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States and that the Judgment of the said Court be set aside and judgment entered if favor of petitioner and for such other relief as to the Court seems proper.

Dated July 5, 1944.

WALTER A. LEIMER,
Petitioner and Attorney.